

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AGM-Nevada, LLC)	
)	
Licensee of Station WMV815)	File Number EB-02-DV-067
Albuquerque, New Mexico)	
Facility ID # 25529)	and
)	
Licensee of Station WMW873)	File Number EB-02-DV-071
Albuquerque, New Mexico)	
Facility ID # 51762)	and
)	
Licensee of Station KYLZ-FM1)	File Number EB-02-DV-072
Albuquerque, New Mexico)	
Facility ID # 82812)	NAL/Acct. No. 200232800012
)	FRN 0005-7738-90
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 28, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that AGM-Nevada, LLC ("AGM"), licensee of booster station KYLZ-FM1 and studio-transmitter-link (STL) stations WMV815 and WMW873 in Albuquerque, New Mexico, apparently willfully violated Section 74.1235(e) of the Commission's Rules ("Rules")¹ by failing to operate the booster transmitter within the authorized transmitter power output ("TPO") limits, and apparently willfully and repeatedly violated Section 74.551(a)(3) of the Rules² by operating two STL transmitters from unauthorized locations. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that AGM is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

¹ 47 C.F.R § 74.1235(e).

² 47 C.F.R § 74.551(a)(3).

³ 47 U.S.C. § 503(b).

II. BACKGROUND

2. On March 26, 2001, the Denver Office received a complaint that AGM licensed booster stations KLVO-FM1 and KYLZ-FM1 in Albuquerque were causing interference.

3. On April 17, 2001, a Denver Office Agent inspected the stations. No interference was found. However, during the inspection the Agent found that the STL transmitters, WMV815 and WMW873, were operating from an unauthorized location and that the KYLZ-FM1 transmitter was operating with excessive transmitter output power.

4. The STLs were located at the current studio location at 4125 Carlisle, NE, Albuquerque, New Mexico. The licenses for WMV815 and WMW873 both listed a transmitter address of 300 San Mateo Avenue. According to an AGM employee, in approximately December 1998 the AGM studio and the STL transmitters were moved from 300 San Mateo, NE, Albuquerque, New Mexico, to the current studio location at 4125 Carlisle, NE, Albuquerque, New Mexico. On June 26, 2002, a record search of the FCC database showed that the transmitter address for stations WMV815 and WMW873 had still not been modified.

5. During the inspection on April 17, 2001, station KYLZ-FM1 was found to be operating with excessive transmitter output power. KYLZ-FM1 is authorized to operate with a TPO of 1,800 watts. The calculated TPO was 2,280 watts, or 127% of the authorized TPO. During the inspection, the director of engineering for AGM reduced the TPO to 1,826 watts, thus within the authorized limits.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully and repeatedly fails to comply substantially with the terms and conditions of any license, or willfully and repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵

7. Section 74.551(a)(3) of the Rules states that, "[p]rior Commission approval, upon appropriate application (FCC Form 313), therefore, is required for ... A change in the location of the transmitter or transmitting antenna except when the relocation of the transmitter is within the same building." AGM failed to modify the authorizations to indicate the new location for the STL transmitters. Based on the evidence before us, we find that AGM willfully and repeatedly violated Section 74.551(a)(3) of the Commission's Rules by moving and operating the STL transmitters from a location prior to receipt of the requisite authorization.

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

8. Section 74.1235(e) of the Rules states that, "In no event shall a station authorized under this subpart be operated with a transmitter power output (TPO) in excess of the transmitter certified rating. A station authorized under this subpart for a TPO that is less than its transmitter certificated rating shall determine its TPO in accordance with §73.267 of this chapter and its TPO shall not be more than 105 percent of the authorized TPO." AGM operated the transmitter for KYLZ-FM1 at 127% of the authorized TPO. Based on the evidence before us, we find that AGM willfully violated Section 74.1235(e) of the Commission's Rules by failing to operate the KYLZ-FM1 within the authorized TPO limits.

9. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁶ and Section 1.80 of the Commission's Rules,⁷ for operation at an unauthorized location is \$4,000, and for exceeding power limits is \$4,000. In this particular case, the forfeiture amount for operating at an unauthorized location is assessed for both STLs. Thus, the total base forfeiture amount is \$12,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁸ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$12,000 forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, AGM-Nevada, LCC, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violations of Sections 74.551(a)(3) and 74.1235(e) of the Rules.⁹

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹⁰ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, AGM-Nevada, LCC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 74.551(a)(3) and 74.1235(e).

¹⁰ 47 C.F.R. § 1.80.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4276, Return Receipt Requested and First Class Mail, to AGM-Nevada, LCC, P. O. Box 2700, Bakersfield, CA 93303.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

¹¹ See 47 C.F.R. § 1.1914.